IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 298 AND 299 OF 2001

WRIT PETITION NO.298 OF 2001

Shri Krishnadas A. Naik,
Senior Fitter, Marine
Workshop, River Navigation
Department, Betim,
Bardez-Goa. ... Petitioner.

versus

1. The Captain of Ports,
   River Navigation
   Department, Government
   of Goa, having Office
   at Panaji-Goa.

2. State of Goa, through
   its Chief Secretary,
   having his Office at
   Secretariat, Panaji-Goa. ... Respondents.

WRIT PETITION NO.299 OF 2001

Shri Joseph Fernandes,
Senior Fitter, Marine Workshop,
River Navigation Department,
Betim, Bardez-Goa. ... Petitioner.

versus

1. The Captain of Ports,
   River Navigation Department,
   Government of Goa, having
   Office at Secretariat,
   Panaji-Goa.

2. State of Goa, through
its Chief Secretary,
having Office at Secretariat,
Panaji-Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioners in both the Petitions.

Mr. Guru Shirodkar, Additional Government Advocate for the State in both the Petitions.

CORAM: F. I. REBELLO &
P. V. HARDAS,JJ.

DATED: 1ST JULY, 2003.

ORAL JUDGMENT(PER F. I. REBELLO,J.)

Both the Petitions can be disposed of by this common Order as they raise identical issues. The facts are more or less similar. The reliefs will have to be based on those facts.

2. In Writ Petition No.298 of 2001, the Petitioner was appointed as Fitter Grade II in the Marine Workshop in the pay scale of Rs.210-250. On 24th October, 1988, the Petitioner was promoted as Fitter Grade I in the pay scale of Rs.950-1500. On 1st January, 1986, the recommendations of the Fourth Pay Commission were accepted and implemented from that day. The Petitioners were working in the Marine Workshop of Respondent No.1. At the relevant time, the category of fitters was as under:-

(1) Senior Fitter ... Rs.1320-2040

(2) Fitter Grade I ... Rs. 950-1500

(3) Fitter Grade II ... Rs. 950-1500

(4) Assistant Fitter ... Rs. 800-1150

3. Fitters Grade II and Assistant Fitters raised an industrial dispute which was referred to by the appropriate Government to the Industrial Government. The dispute raised was that the post of Fitter Grade II was a skilled post and the post of Assistant Fitter was a semi-skilled post. Their further contention was that they were not given the equivalent scale meant for a skilled and semi-skilled posts. The Industrial Tribunal answered a reference in favour of the workmen by holding that Fitters Grade II belonged to skilled category and, therefore, would be entitled to the pay scale of Rs.950-1500 and Assistant Fitters who were semi-skilled would be entitled to the pay scale of Rs.800-1150. The Government decided to implement the said Award w.e.f. 1st January, 1986. The benefit, however, was given only to those who were holding at that time the post either of Fitter Grade II or

Assistant Fitter. On 27th November, 2000, the Petitioners herein filed Writ Petition Nos.321 and 322 of 2000. A statement came to be made before this Court, that the case of the Petitioners was being considered favourably and in that light, the Petition was allowed to be withdrawn. That statement made on behalf of the Respondents namely State of Goa and The Captain of Ports was accepted by this Court and in view of that, this Court observed that a grievance of the Petitioner appears not to be there any more and accordingly disposed of the Petition. Inspite of the assurance given to this Court and accepted by the Court the Petitioner's case was not considered favourably and consequent to that the present Writ Petition.

4. A few additional facts may be noted. The Petitioner was working as Fitter Grade II between the period from 1st January, 1986 to 24th October, 1988. He was thereafter promoted to Fitter Grade I from 24th October, 1988 and worked as such till July, 2000. In July, 2000, he was promoted as Senior Fitter and continued to work as Senior Fitter.

In Writ Petition No.299 of 2001, the Petitioner was appointed to the post of Fitter Grade II in the pay scale of Rs.260-400 on 16th March, 1984. He was promoted as Senior Fitter on 31st January, 1996.

As can be seen from the records of this Petition, the sanction to implement Award of the Industrial Tribunal was taken by Government on 20th July, 1998 with retrospective effect from 1st January, 1986. During the pendency of this Petition, the Government has taken a decision on 9th January, 2002 to re-group or re-classify the posts of Fitters. The posts of Fitters Grade I, Fitters Grade II and Assistant Fitters have clubbed as Fitters. In other words, the post of Fitter Grade II ceased to exist having been upgraded to post of Fitter. The same was notified in the Official Gazette on 21st February, 2002.

5. When the matter came up for hearing before this Court, the Respondents were directed to consider the matter and place the decision before this Court within eight weeks. That decision was thereafter placed before this Court. The report shows that the Petitioners were denied the benefit of the Award passed by the Industrial Tribunal as they were not parties to the reference. It was further set out that a cabinet decision had been taken to redesignate Assistant Fitters/Fitter Grade II, Fitter Grade I to the post of Fitters in the pay scale of Rs.3050-4590. That decision was thereafter ultimately published in the Government Gazette dated 23rd February, 2002 and the

Order to that effect has been passed on 22nd April, 2002.

6. At the hearing of these Petitions on behalf of the Petitioners, it is principally contended as under:-

1. It is first contended that a post of Fitter Grade I was a promotional post from Fitter Grade II. Once Fitter Grade II were given pay scale of Rs.950-1150 then the promotional post had to carry higher time scale. That having not been done the action of the Respondents would be violated of Article 14 and consequently this Court should direct the Respondents to place the post of Fitter Grade I in the higher time scale than that of Fitter Grade II.

2. It is next contended that the Respondents having accepted to grant the pay scale of Fitter Grade II from 1st January, 1986 in terms of the Award that benefit should also have been extended to the Petitioners from 1st January, 1986. It is further submitted that if not the pay at least they should have been fitted in the appropriate time scale and paid the benefits at least three years prior to the filing of the earlier Writ Petition before this Court.

Reliance is placed on Judgments which we will advert to the extent necessary.

On behalf of the Respondents, it is contended that the Petitioners herein were not parties to the Industrial Reference. Once that be the case, the benefit of the Award could not be extended to the Petitioners herein and at the time of passing of the Award they were already in a higher time scale having been promoted. It is further submitted that the real grievance of the Petitioners is that Fitters have been granted Time Bound Promotional Scale on account of that they are drawing higher pay than that of the Petitionrs. It is pointed out that there is no anomaly and in these circumstances, the question of granting benefit to the Petitioners would not arise. To the second contention, it is contended that the Petitioners were not holding the post at the time when the Award was passed and as such could not have been fitted in the time scale of Fitters Grade II.

7. We may now deal with the first contention namely whether the Petitioners can claim that they be placed or the Respondents should be directed to create a higher time scale than that was awarded to Fitter Grade II pursuant to the Award of the Industrial Tribunal. That issue could have been considered if not for the subsequent events. During the pendency of the Petition, the Government has taken a policy decision to abolish the post of Assistant Fitter and Fitter Grade

II and redesignate these posts alongwith the post of Fitter Grade I to Fitter. In other words, there are no longer posts of Fitter Grade II, Assistant Fitters or Fitter Grade I in the time scale of Rs.3050-4590. A submission was made that once there are Recruitment Rules and Recruitment Rules show the various posts and these Rules were framed under Article 309 of the Constitution of India, this cannot be given a go-bye by administrative instructions. We are not impressed by that contention. It is open to the Government to club or redesignate the post as long as such re-designation or re-classification is not arbitrary. We are not called upon to decide the seniority in the new cadre. Suffice it to say those holding higher posts will have to be placed en-bloc senior to those who were holding posts in the lower time scale or feeder posts for promotion to the next higher post.

In these circumstances, we are of the opinion that there is no breach of violation of Article 309 by the Respondents in issuing the Notification dated 8th February, 2002. Something can still be said about the Notification. However, such posts are in the same Department and really speaking what the Respondents have done is redesignation of the posts. In the light of that matter, the first contention must be rejected.

8. We then come to the second contention whether the Petitioners will be entitled to be fixed in the upgraded time scale of Fitter Grade II as awarded by the Industrial Tribunal w.e.f. 1st January, 1986. The only argument advanced on behalf of the Respondents to deny to the Petitioners the said grade is that they were not parties to the Award and consequently the time scale could not have been granted to them. We are afraid that it would not be possible to accept this contention. In the very same Department, there cannot be two time scales one for award staff and the other for non-award staff. It is true that by the time, the time scale was granted the Petitioners who are entitled were already promoted. However, once Respondents took a decision to the Award the time scale from 1st January, 1986, that will be the time scale in the Department for all those who were holding the posts of Fitters Grade II irrespective whether they are promoted or were covered by the Industrial Award or not. Otherwise there would be infraction of Article 14. Two persons doing the same work with same responsibility in the same Department could not be discriminated by giving the scale to one and denying to the other. Such a classification would be arbitrary.

With that, we may have to consider the Judgments which have been adverted to. The Apex Court

in **Amrit Lal Berry** v. **Collector of Central Excise, New Delhi and others** reported in (1975) 4 SCC 714 was considering an issue as to whether when a decision is taken, whether that decision should benefit only the parties to the case or should be extended to others. The Apex Court answered the issue in the following words:-

> ".....We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court".

The other Judgments are of the learned Single Judge of the Kerala High Court in **R.Madhavan Assari Charge Hand Wood Work Shop, Kollakadavu, Mavelikara** v. **The Kerala State Small Industries Development and Employees Corporation Ltd.(SIDECO) and others** reported in 1991 LAB. I.C. 994. There the issue was of the time scale or the basic pay to be awarded to a person who was senior. The learned Judge observed that there is a fundamental principle in service law that when everything else is equal, a senior in service should

receive a salary higher than, or at least equal to that drawn by his junior. We are really not concerned with this issue.

On behalf of the Respondents, the learned Counsel has relied on a Judgment of the Apex Court in the case of **E.S.I. Corporation** v. **P. K.Srinivasmurthy** reported in AIR 1997 SC 2983. There the issue was of stepping up the pay of a senior who was drawing less pay than his junior. We are really not again concerned with that issue. The next case is of **Union of India** v. **O.P. Saxena** reported in (1997) 6 SCC 360. There certain Rules were being considered in the matter of removal of anomaly against that Judgment. Considering the issue before us that would not be relevant. The last Judgment is in the case of **Union of India and others** v. **Sushil Kumar Paul and others** reported in (1998) 5 SCC 268. In that case also the issue was anomaly, with the senior claiming stepping up of pay with the pay of his junior. All the three Judgments will not deal with the issue which we are dealing.

9. In our opinion, the ratio decidandi that has to be applied is in the case of **Amrit Lal Berry** v. **Collector of Central Excise, New Delhi and others**(supra). In the instant case, though the

Petitioners were not parties to the reference as the pay scales were implemented w.e.f. 1st January, 1986, those who were holding the posts should be given the benefits of the said pay scales. The Petitioners, if, they were entitled cannot be denied that benefit.

From the facts on record, it is only the Petitioner in Writ Petition No.298 of 2001 who would be so entitled to the benefit, as he was holding the post of Fitter Grade II between 1st January, 1986 to 24th October, 1988. The Petitioner in Writ Petition No.299 of 2001 was already drawing the pay scale of Fitter Grade I on that date.

10. When the Petitioners come to this Court for filing Writ Petitions a solemn assurance was made to this Court that the case of the Petitioners would bee considered favourably. This Court accepted that statement and accordingly, the Petition was disposed of on that statement. The Petitioners thus have been made to file subsequent Petitions as the relief of the Petitioners sought was not granted. When a statement is made to the Court and the Court accepts it, it is with assurance that the matter has been considered and would be considered. It is no doubt true that on behalf of the Respondents, a statement is made, that the statement was made inspite of instructions to the

contrary. Whatever may be the position, when statements are made they should be with a responsibility, so that the Petitioners rights are not defeated. We hope in future there will be no occasion for this Court to say anything further in such matters.

11. In the light of that, the following Order:-

In so far as Writ Petition No.298 of 2001 is concerned, Rule made partly absolute. The Respondents are directed to fit the Petitioner into the awarded time scale of Rs.950-1500 from 1st January, 1986 till his promotion to Fitter Grade I on 24th October, 1988. While fitting the Petitioner in the pay scale, the Petitioner would be entitled to be fitted alongwith the increments which he would be entitled to in the time scale. The Petitioner consequently would be entitled to the benefit of getting his basic pay fixed in the promoted post. In so far as back wages are concerned, considering that the Petitioner had earlier filed a Petition in this Court being Writ Petition No.322 of 2000 which came to be disposed of by this Court on 27th November, 2002, the monetary benefits should be paid to the Petitioner w.e.f. 1st April, 1997 till date, along with consequential benefits.

12. In Writ Petition No.299 of 2001, as the

Petitioner was already drawing pay scale in the higher post on 1st July, 1986, he will not be entitled to any benefit. Rule discharged.

F. I. REBELLO, J.

P. V. HARDAS,J.

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